

VOIR DIRE - PARKER

20

1 Q. 45f, why did you document this graffiti as a gang  
2 detective?

3 A. It says, "Valentine Bloods." And it's on the same  
4 basketball court with the previous two graffiti pictures.

5 Q. And 45g, as a gang detective back in 2005, what made you  
6 document this particular gang graffiti?

7 A. "311" and "C-killer" is Crip killer.

8 MS. GREENE: Those are my questions with regard to  
9 this particular set of exhibits.

10 MR. POTOLSKY: Your Honor, as to Exhibits b and g,  
11 we have an additional objection other than what's previously  
12 been stated.

13 Now understanding what the detective is ready to  
14 talk about as to b and g, we believe under Rule 403 they  
15 should be excluded because the additional probative value is  
16 far outweighed by the danger of unfair prejudice.

17 I'm going to ask the Court to keep in mind that none  
18 of the defendants in opening statement or throughout the trial  
19 or I expect in closing argument are going to be disputing that  
20 the Bloods is an organization. The probative value at some  
21 point reaches overkill and unfair prejudice.

22 In b, the "Mecca" is "Murder every Crip child  
23 alive." And in g it says "Crip killer."

24 Now there's plenty of other photographs, plenty of  
25 other graffiti that can establish the type of stuff the

1 government wants to do. But to have these defendants  
2 confronted with graffiti that was written by unknown people  
3 when they were 11, 12 years old, and as far as I know  
4 unconnected with the Bloods as a group, is unfairly  
5 prejudicial for the violence that's contained in that  
6 graffiti.

7 So in addition to the other grounds, we would add a  
8 Rule 403 objection, specifically as to b and g.

9 Having said that, the limited taste of the  
10 testimony, it doesn't appear that those limited questions are  
11 really calling for hearsay answers. I mean, I think in  
12 candor —

13 THE COURT: The only one that does would be where  
14 saying that "B Ford" stands for the Beatties Ford Bloods.

15 MR. POTOLSKY: Yes, sir.

16 THE COURT: He can testify that there is a group  
17 called the Beatties Ford Bloods. But he can't say that "B  
18 Ford" means "Beatties Ford Bloods." That was the only one  
19 that I thought was an opinion about stating what a particular  
20 thing said. But the other — did the other — did g say "Crip  
21 killer" or was it a C with a mark through it that means "Crip  
22 killer"?

23 MR. SMITH: That was the point that I was just  
24 fixing to raise, Your Honor. The fact that you just asked  
25 that question and that he testified to explain that issue that

1 you just asked the question about —

2 THE COURT: Yeah.

3 MR. SMITH: — was what I was fixing to raise was  
4 that that next step of him explaining and interpreting that,  
5 it goes across that line of what we have been talking about  
6 for the past five or ten minutes. It's, I mean, I agree. The  
7 fact it says "Valentine Bloods" that's self-explanatory. The  
8 fact that the other one has Blood in the middle star is  
9 self-explanatory. It's that second step, again, with what  
10 looks like either a 3 or —

11 THE COURT: One is a C and one's a 3.

12 MR. SMITH: Well —

13 THE COURT: Looks like it.

14 MR. SMITH: I mean, it's a backwards C, if anything,  
15 with a line through it. But again, that takes that second  
16 step of interpretation that we've been discussing that we find  
17 objectionable.

18 MR. CULLER: Your Honor, I want to add that — well,  
19 there is an opinion from the Fourth Circuit, United States  
20 versus Williams. And it actually speaks to Agent Parker  
21 testifying as a lay witness. And they find it's harmless  
22 error because they find there's plenty of evidence in the  
23 record to support the jury's conclusions as they pertain to  
24 that defendant.

25 By the way, one of the defendants was acquitted in

1 that case and that was upheld or, excuse me, she was convicted  
2 and her conviction was reversed on appeal. I'm sorry -- but  
3 the -- I mean, they go into detail about, you know, Agent  
4 Parker being used as a lay witness --

5 THE COURT: Give me the cite and I will look at it  
6 when we break.

7 MR. CULLER: Yes, sir.

8 MR. WEIDNER: Your Honor, it's the Fourth Circuit  
9 Court of Appeal, number 14:4866. And the section of that  
10 opinion that deals with Detective Parker's testimony -- and  
11 that was a Bloods trial case. It begins at page -- at the  
12 bottom of page 15. It runs for two or three pages.

13 THE COURT: I'll take a look at it.

14 MS. GREENE: I know the Court's going to look at it.  
15 First of all it's an unpublished opinion.

16 MR. CULLER: It is.

17 MR. WEIDNER: It is an unpublished opinion.

18 MS. GREENE: But I just want to point that out. But  
19 I believe the section that pertains to Detective Parker's  
20 testimony, I know the Court is going to look at it, I don't  
21 think that the Fourth Circuit found that it was error. I  
22 think the Fourth Circuit said, "at most it would have been  
23 harmless error." The Court can go back and look at it. I  
24 can't recall.

25 THE COURT: What I'm saying is, some of the stuff is

1 factual.

2 MS. GREENE: Right.

3 THE COURT: This is a gang officer who is taking —  
4 who is — who finds these things to be important for him to  
5 document. And that's — there's nothing wrong with that.  
6 And — but the problem can get there when opinions come up  
7 like a C backwards means "Crip killer." That is not going  
8 to — you'll be able to get a witness — one of the guys will  
9 get up here that will tell you what that means because they  
10 all know it.

11 MS. GREENE: The other thing, Your Honor, to the  
12 Court's point, he's a fact witness.

13 THE COURT: He is a fact witness and then you can go  
14 over opinion.

15 I'm going to read Williams and take a look at it.  
16 You guys take a look at it —

17 MS. GREENE: It also had to do with him interpreting  
18 code in jail calls is what that portion of the opinion is  
19 about, I believe, was. That in a Bloods trial they had  
20 Detective Parker talk about what he meant about certain drug  
21 codes were in wiretaps, I think. It didn't have to do with  
22 him explaining graffiti photographs that he had taken or  
23 anything like that.

24 THE COURT: Right, but it's explaining things.

25 MS. GREENE: It is.

1 THE COURT: That's where the — those that are in  
2 the middle of it, that live it, can tell what it means.

3 MS. GREENE: Right.

4 THE COURT: But someone else who is not living it is  
5 in a position of being a fact witness maybe and maybe an  
6 expert witness.

7 Let me take a look at the opinion. And there's no  
8 point in, you know, I wanted to know whether — if it's — if  
9 something is, you know, been found — is error but harmless  
10 error. I don't want to commit any error. I mean, I'm going  
11 to commit error in every single trial I do, most of it  
12 harmless. Because I'm very, very careful about it. But  
13 nobody tries a perfect case. And the Court tries to avoid any  
14 error that it can.

15 So I will take a look at what that case says, and  
16 you all are going to have to object on these things. I'm not  
17 going to give you a blanket objection so that you all can pour  
18 through the transcript looking for error at a later date. If  
19 you got something to object, object.

20 MR. CULLER: Yes, sir. I was just going to say, I  
21 have the opinion cued up —

22 THE COURT: I think David's got it for me right now.

23 MR. CULLER: Very well.

24 THE COURT: You give us a cite and we can pull it  
25 up. He usually pulls stuff up before you guys do. If you got

1 something we don't have, we'll get it.

2 MS. GREENE: Your Honor, I would also point out 701  
3 lay witness testimony, as well, things that he has observed  
4 and perceived and testimony based upon his own perceptions, as  
5 well.

6 THE COURT: Okay. I'll take a look at it. Do you  
7 all have Williams there to look at, the case?

8 MS. GREENE: Your Honor, I don't have a copy of it  
9 in front of me. My recollection is that the section on  
10 Detective Parker's testimony is relatively short. That issue  
11 that the defendants objected to and my recollection is, it had  
12 to do, again, had to do with his interpreting code, coded  
13 words in telephone calls.

14 THE COURT: Okay. Very good.

15 MR. WEIDNER: Your Honor, I have a copy of the  
16 opinion on my computer but unfortunately, I don't know why,  
17 but I'm not able to get on WiFi in the Court. So I can't  
18 email it. But Ms. Greene is welcome to read it on my  
19 computer.

20 THE COURT: They're probably jamming you.

21 Mr. Davis, you go ahead and make another copy of  
22 that for Ms. Greene and Mr. Gast.

23 Let's go ahead and take a break.

24 Fifteen minutes or it could be longer, depends on  
25 how long it takes me to digest this material.

1 (Recess from 10:17 until 10:38.)

2 THE COURT: Okay. In the Williams case, United  
3 States versus Williams, is one of the folks in this case.  
4 What happened was the interpretation of telephone calls by  
5 both the officer and the — and some of the defendants. The  
6 Court didn't find any problem with the gang folks saying what  
7 "feed the plate means" and all those things mean. None.

8 What the problem was that the officer's  
9 interpretation of what the call said which was found to be  
10 harmless in that all the other people said the same thing. It  
11 meant "kill the witness, kill the person." All that was  
12 allowed in, every bit of it, by the people that testified  
13 about it.

14 So that's what I'm going to do here. We're not  
15 going to have them — the officer can testify what he took,  
16 what pictures he took and why — and as part of his being in  
17 the gang group that he's trying to investigate.

18 The Court's going to allow all of the pictures in.  
19 I've done the 403 balancing test and I find that in a case  
20 where the allegations are about murder and racketeering and  
21 robbery, that the probative value of these in terms of  
22 determining what this gang is involved in as part of their  
23 racketeering, outweighs any prejudicial effect as to what is  
24 said in these. I am not going to allow an interpretation of  
25 any of this.



1           For instance, he can — if you have — that it's  
2 something Blood or whatever, he can't testify what that means.  
3 You can ask him another question as to whether there's an  
4 organization in Charlotte that goes by such and such. Then  
5 the jury will have to interpret that.

6           MS. GREENE: I can or cannot ask him that?

7           THE COURT: You can. You can ask him if there's an  
8 organization in Charlotte known as such and such. And then  
9 they can make the — they can decide whether that means that.  
10 If they want to spend hours arguing that it doesn't mean that,  
11 they can. They can do whatever they want to do about it. You  
12 can't testify that a C with a mark through it means "Crip  
13 killer."

14          MS. GREENE: Understood.

15          THE COURT: That will be whatever that shows. So  
16 what I will allow him to do is testify about facts, what he  
17 collected. And then I've already heard testimony about some  
18 of these things. Some of these things I know what they mean  
19 because I've heard testimony about what they mean in the  
20 group.

21           He can look at Facebook pictures and say, "Did you  
22 see — any of your pictures have any of this in it? Yeah."  
23 Then you put that picture up. And then you can put the  
24 Facebook up. If one of them has something in it that matches  
25 up to this graffiti, it matches up to the graffiti.

1 But you have to have somebody else testify about  
2 what some of this stuff means. It was pretty clear. This one  
3 was all agreed in it. It was Agee, Wynn and Schroeder from  
4 the Middle District that ruled on this case and it is  
5 unpublished. It's not exactly what the defense says that it  
6 says. But it's the interpretation by the officer that was  
7 error. It's not -- the members of the gang can tell the folks  
8 what it means. And these people will understand it. They'll  
9 either decide these folks are in the gang and in the  
10 conspiracy and did this or not. It's going to be up to the  
11 jury to make that call.

12 MS. GREENE: Very well, Your Honor, understood. And  
13 I just want to make sure that I am complying with how the  
14 Court wants Detective Parker's direct to go.

15 Could I direct questions to him -- without him  
16 saying what anything means. But could I say -- the Court just  
17 said kind of like comparing things. Could, for example, if  
18 he's reading, reviewing a Facebook post that say, that has,  
19 for example, the C crossed out in a Facebook post --

20 THE COURT: Um-hmm.

21 MS. GREENE: -- could I, without him saying what he  
22 thinks it means, could he say that he has seen Bloods members  
23 cross out C's before. Or he has seen that in all his years of  
24 investigating Bloods without saying what it means.

25 THE COURT: Not unless -- not unless he seen him do

1 it. If he has a Blood member doing this to a C. No, he's not  
2 going to say that in his investigation he's done that. This  
3 is pretty clear.

4 All the stuff is on the same basketball court. A  
5 lot of the stuff is put together. Valentine on the sign.  
6 Murder every, whatever. And then the C crossed out and  
7 "killa" is there. Somebody is going to say what that means  
8 other than him. And if they don't then that's too bad.  
9 You're not going to recoup expert testimony through lay  
10 testimony. But you will get lay testimony.

11 And any fact that this witness knows he can testify,  
12 and any member of this organization can say what those things  
13 mean inside the organization. They can, you know, they can  
14 cross-examine them as snitches all they want and the jury will  
15 decide whether they're telling the truth or not.

16 But it's going to be up to whatever — whatever the  
17 jury finds is the truth of this. And on this testimony, no.

18 What he can do is, if you got something like a C  
19 crossed out, you can point that out and you go right back to  
20 that picture and show him that picture.

21 MS. GREENE: Right.

22 THE COURT: And let them make the call.

23 MS. GREENE: Okay.

24 THE COURT: Cause they're probably not going to hear  
25 anything that that has anything to do with, well, that's about

1 the Lord or something like that. Because nothing is coming  
2 that's going to explain that other than what's there and  
3 there.

4 MS. GREENE: Okay.

5 THE COURT: But I'm not going to -- no opinions.  
6 That's where the Court got into that with this specific  
7 witness in this district, and that is interpretation by a lay  
8 person of -- the people in the gang can say what it means. I  
9 mean, in this we already heard lots of stuff about what it  
10 means, "on the plate, he's food" and all that kind of stuff.  
11 Good Lord. Grow up.

12 And then they got a -- let's see here. In talking  
13 about this says, "Barnett specifically identifies only one  
14 challenged statement that pertained to him: In Parker's  
15 testimony the term 'eat the plate,' when used in Barnette's  
16 phone call with inmates at the Bertie Correctional Center,  
17 meant to follow an order, in that case, 'kill Del Ray  
18 Jackson.' Several other witnesses testified 'eat the plate'  
19 meant to carry out an order and the gang members could be  
20 ordered to attack or kill an identified person. And  
21 additional statements on the phone made it clear that Jackson  
22 was supposed to be shot and killed."

23 So they did not find reversible error there. And it  
24 was fine for the members of the gang to say exactly what those  
25 terms meant.

1           So we're going to hear a lot of testimony, if  
2 they've got it from people, and they're going to be allowed to  
3 testify about what those things mean, but you're going to have  
4 to get it from somebody else beside him.

5           MS. GREENE: Understood, Your Honor.

6           THE COURT: He can testify what he saw. He can  
7 compare what he saw. That's it.

8           MS. GREENE: Yes, sir.

9           THE COURT: Okay.

10          MR. POTOLSKY: Judge, with regard to our specific  
11 objection under Rule 403 as to — I believe it's Exhibit b.

12          THE COURT: Yes, sir.

13          MR. POTOLSKY: That's the "Mecca."

14          THE COURT: Yes, sir.

15          MR. POTOLSKY: Underneath "Mecca" someone else wrote  
16 "murder every Crip child alive." I believe that I stated this  
17 as the ground previously but I just wanted to be very clear if  
18 I had not.

19                If I understand correctly that was 2004 when the  
20 picture was taken. Mr. Hankins was about 11 years old and  
21 well before he's alleged to have joined the group. We don't  
22 know who wrote it, what the context was. We don't know who it  
23 is that took the "Mecca" and then in a different color and a  
24 different handwriting put in "murder every Crip child alive."

25                I've reviewed the case law on prejudice and

1 probative value with graffiti. And when it is relevant to  
2 motive or any other fact in issue I think it comes in.

3 For example, were this a Blood/Crip case, certainly  
4 there would be some probative value to that. Something that  
5 was written before he's alleged to have been a member that  
6 he's never approved, adopted, had knowledge of, et cetera, of  
7 that nature is irrelevant.

8 In other words, there's no probative value. It  
9 doesn't make any fact in issue in this case against  
10 Mr. Hankins more likely. What it does is suggest to the jury  
11 unfairly that he is a child killer. And for that reason we  
12 object under Rule 403.

13 THE COURT: It does not show that in any way. What  
14 it shows is that at that time that the Bloods terminology and  
15 use at that time in existence in Charlotte was there.

16 MR. POTOLSKY: Which we don't contest.

17 THE COURT: You'll be able to show that they have no  
18 evidence that at the time that was done he was a member of the  
19 Bloods.

20 If you want — at any time. I mean, you can point  
21 out that he was 11 at that time. We have one witness who was  
22 taken in at 11 by this organization. Must make mothers and  
23 grandmothers everywhere really happy their children are being  
24 brought in.

25 But the — but in this particular case they're

1 trying to establish an organization that is involved in a RICO  
2 and where it starts.

3 And the testimony that was allowed in this trial, in  
4 that Williams trial, goes all the way back to -- some we  
5 already heard -- to New York in 1993 and all that was found to  
6 be relevant. So this moving up to 2005 and 2004 is relevant  
7 to this particular case as to the organization.

8 You're correct in showing -- saying that it doesn't  
9 prove anything about any one of these three guys directly yet.  
10 But it does show the organization that they're alleged to be  
11 part of was in operation and using many of the terms that I've  
12 already heard and may hear again from other witnesses.

13 MR. POTOLSKY: Judge, we understand that. I think  
14 our point is under Rule 403, even relevant evidence should be  
15 excluded if the probative value is substantially outweighed by  
16 the prejudice. We're not disputing that the Bloods are an  
17 organization. We're not disputing with this witness or any  
18 other witness.

19 The slight, if any, additional probative value of  
20 "murder every crip child alive" is substantially outweighed by  
21 the inflammatory nature of that statement. That statement  
22 doesn't make any fact in issue in this trial against  
23 Mr. Hankins more likely than without it.

24 And the Court, in admitting all the other graffiti,  
25 does have the discretion to exclude that one photo because of

1 the grounds that we've been arguing.

2 THE COURT: I appreciate the argument. The Court is  
3 going to use its discretion here and finds that it is more  
4 probative than prejudicial. And that the probative value in  
5 the government's showing this organization is part of their  
6 proof.

7 What I -- you know, it's a complicated indictment.  
8 We're trying to do the instructions on that and we've got  
9 about several different ways. We got North Carolina law  
10 implicated, federal law implicated, South Carolina law  
11 implicated. It may take me two days to read the instructions  
12 in this case.

13 MR. SMITH: We would just preserve that objection,  
14 as well, Your Honor.

15 THE COURT: Absolutely, that objection. You all  
16 want to make it, too, Mr. Foster?

17 MR. FOSTER: Yes. Thank you, Your Honor.

18 THE COURT: Mr. Foster, yes.

19 Certainly. I think it's very probative. But I have  
20 looked at this. I appreciate you all pointing out the  
21 Williams case. And I think that I see a very strong line that  
22 I can require the government to follow and take care of it in  
23 that way. So that's what I'm going to do.

24 You're going to use him as a fact witness and a fact  
25 witness only. I'm not going to allow opinions to come into



1 the case.

2 MR. POTOLSKY: Understood. Need we object again in  
3 front of the jury as to photograph B or Exhibit B?

4 THE COURT: No. No. That — no, your objections —  
5 but what I'm just saying is and we can't take — we're not  
6 going to be able to take a sidebar like this on every single  
7 objection. This one I'm glad it worked out this way. But I'm  
8 not going to send the jury out and — although it's quicker  
9 for us to go into the side room, I think it's  
10 counter-productive to have the defendants staring at the jury  
11 while we're out. I think that's counter-productive to what  
12 we — to this case.

13 So we're not going to be taking many sidebars out.  
14 So understand that you may have to state your reason for an  
15 objection on the record.

16 And I've been around long enough. If you can do it  
17 for a limited purpose that I understand. If you say,  
18 objection, you know, 403. I understand what you're objection  
19 is there. But you may have — something I don't understand  
20 you may just have to explain.

21 And if it's very — its highly prejudicial that I  
22 need to hear it outside the jury, we will take sidebars. But  
23 I'm not going to — this has interrupted this case for nearly  
24 an hour and — not unfairly, not wrongly. But if we did this  
25 all the way we would be trying this case till Christmas.

1           So anybody not understand where we are on this  
2 witness?

3           MS. GREENE: I think we're — I think we're good,  
4 Your Honor.

5           MR. SMITH: Yes, Your Honor.

6           MS. GREENE: He can't say what anything means but he  
7 can read things into the record or say what was done or what  
8 he saw or what he did.

9           THE COURT: I'm going to let him — I'm going to  
10 allow all those pictures that you've shown so far into  
11 evidence. I'm going to allow the Facebook pictures into  
12 evidence. If there's some that — subject to — if they have  
13 an objection, a 403 objection, I'll consider that.

14           But generally he's competent to testify about all of  
15 those things that are facts that he has seen as an  
16 investigator and that can be hard facts.

17           The interpretation of it is going to have to be left  
18 up to the jury or the people that are inside the organization.  
19 They can testify about what that stuff means. They're living  
20 it or not, as the case may be.

21           All right. Let's bring the jury in.

22           (The jury was returned to the courtroom at 10:54.)

23           THE COURT: Okay. The witness may be seated.

24           THE WITNESS: Thank you, Your Honor.

25           THE COURT: Thank you for your patience, members of